would require respondent to compensate a carrier providing two-way wireless service for the costs that the carrier incurs, but on the other hand, allow respondent to deny compensation to a carrier providing one-way wireless service for the costs that such carrier incurs. To be sure, when respondent terminates calls on its network from cellular and other wireless providers, respondent is compensated for the costs that it incurs in terminating such traffic. We believe that Congress intended that each and every carrier should be compensated for the costs that it incurs in terminating traffic, and did not intend to deny a class of carriers -- in this case, one-way paging -- the right of compensation simply because there is no traffic terminated on the local exchange carrier's network. We fail to discern any public policy that Congress intended to further by denying such compensation to one-way paging carriers when, at the same time, Congress went to such great lengths to grant such carriers the right to interconnect and compete on an equal footing under the Act. We believe that Congress simply recognized that historically, while local exchange carriers have been compensated by competitors for terminating competitors' traffic, the local exchange carrier should reciprocate by compensating competitors for terminating the local exchange carrier's traffic.

Our construction of the Act is consistent with that adopted by the Federal Communications Commission ("FCC"). In Local Competition Provisions of the 1996 Telecommunications Act, First Report and Order, 11 FCC Rcd 15499 (Aug.1, 1996), the FCC promulgated regulations pursuant to the Act that required all LECs [local exchange carriers] to enter into reciprocal compensation arrangements with all CMRS [commercial mobile radio service] providers, including paging providers, for the transport and termination of traffic." Id. at para. 1008. The FCC was careful to expressly specify, and clarify any perceived ambiguity, that paging providers are included in the class of CMRS providers entitled to compensation for terminating traffic. See also id. at para. 1092 ("... paging providers, as telecommunications carriers, are entitled to mutual compensation for the transport and termination of local traffic...") and para. 1093 ("we direct states, when arbitrating disputes under Section 252(d)(2), to establish rates for the termination of traffic by paging providers based on forward-looking economic costs of such termination to the paging provider.") The FCC's policies are consistent with our interpretation of the Act that Congress intended to compensate all carriers, including one-way paging carriers, for terminating traffic.

3.2 Termination and Transport

Respondent next claims that applicant does not transport and terminate traffic, and hence does not qualify for compensation under the Act. We disagree. As discussed above, paging carriers qualify as telecommunication carriers providing telecommunications services within the meaning of the Act. When a caller dials a paging customer, the call is initially transported on the local exchange carrier's network, and then handed off to the paging carrier for ultimate delivery to the called party. As explained by applicant, dedicated trunks pick up land-to-pager calls at [respondent's] tandem offices. These facilites then carry such calls to Cook's terminals. Exhibit 1 (Cook Testimony). In this arbitration, both parties agreed that similar dedicated trunks are used to connect respondent's end-offices to applicant's paging terminals. We agree with applicant that it provides termination and hence applicant should be compensated regardless of whether the interconnection occurs at an end-office or tandem. However, as discussed below, we disagree with applicant that it is entitled to receive compensation for any costs incurred beyond the paging terminal. Cook is only entitled to compensation for its paging-terminal costs, which, for the purposes of this arbitration, we will consider an "equivalent facility" to an end office switch.[1]

From the evidence in this case, Cook provides no transport because Pacific Bell provides the interoffice trunking facilities between its end office and/or tandem and Cook's paging terminal. Therefore, Cook is not entitled to compensation for transport between respondent's end-office or tandem and applicant's paging terminal.[2] Although Cook is not entitled to compensation for transport, neither will it be charged. We note that pursuant to a stipulation discussed below, Pacific will not charge for the facilities it uses to transport calls to Cook because Cook is awarded termination charges in this order.

3.3 Discrimination

Section 251(c)(2) requires nondiscriminatory interconnection for transmission and routing of telephone exchange service and exchange access. Applicant does not provide telephone exchange service or exchange access. Therefore, the nondiscrimination provision of this subsection does not control.

Section 252(i) further requires that respondent:

> "...shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

Applicant asserts this obligates respondent to offer applicant the same rates paid to Pac-West Telecom, Inc. (Pac-West),

1 D.92-01-016, 43 CPUC2d 3, 15 (1992); *cf*. 47 C.F.R. § 51.701(d).

2 However, to the extent Cook owns facilities that connect from respondent's end-offices or tandems to Cook's paging terminals, applicant is entitled to compensation for transport.

as incorporated in the agreement advocated by applicant. We affirm the Arbitrator's findings that this is incorrect. The Pac-West agreement was not approved under the Act. Moreover, applicant is not a competitive local carrier as is Pac-West, and applicant's service is not the same as Pac-West's service. Also, there is no evidence on the record of this proceeding for us to determine whether the rates adopted in the Pac-West agareement are based on cost.

3.4 Public Policy

Congress provided under the Act that local exchange carriers interconnect with, and pay compensation for, the termination of traffic, to all telecommunications carriers that provide telecommunications services. In this case, applicant incurs costs for terminating traffic that originates on the respondent's network. No public policy is served by denying applicant the right to be compensated by the respondent (with which applicant interconnects) on just and reasonable terms for the costs that applicant incurs in transporting and terminating traffic.

3.5. Compensation Rates

Pursuant to Section 252(d)(2)(A), terms and conditions for reciprocal compensation of transport and termination must be based on a reasonable approximation of the additional costs of termination. Having reviewed the cost information submitted on the record, we do not feel confident in establishing final rates at this time. However, we are prepared to establish interim rates.

Cook's witness, Trout, introduced a cost study which purportedly arrived at a forward-looking cost of 2.4 cents per page. Trout's study assumed a network designed to serve 50,000 customers that would each generate 70 pages per month. His study included the costs for the paging terminal, for the paging transmitters, and for the facilities linking them together. Cook requests the termination rate that Pacific pays to Pac-West Telecom under an agreement submitted to the Telecommunications Division in Advice Letter 18115, that would result in 0.95 cents compensation per page (less than Trout's cost estimate).

Pacific's witness Scholl testified that Trout's cost study was flawed and that after making adjustments, a more appropriate estimate would be from 0.006 to 0.088 cents per page depending on the type of paging terminal used and on the capacity assumptions for that paging terminal. Scholl argues that Trout's study did not conform to the consensus costing principles established in D.95-12-016. Scholl's adjustments exclude costs associated with paging transmitters and with the facilities that link the transmitters with the paging terminal. Scholl argues that these portions of the paging network are not traffic-sensitive and therefore should not be included in the TSLRIC of termination just as local loop facilities are not included the TSLRIC of termination in the wireline context. Also, Scholl attempts to eliminate costs that are not directly associated with paging service, such as voice features. Additionally, Scholl argues that Pacific should not have to compensate Cook for traffic sent over Type 1 (end-office) interconnections because Pacific avoids no costs by sending traffic that way.

We share Pacific's concerns that Cook has not submitted an acceptable cost study which is consistent with our adopted consensus costing principles adopted in D.95-12-016. Pacific's argument to limit the cost study to paging-specific features, to traffic originated by Pacific, and to traffic-sensitive elements is compelling. We are also concerned that Cook's study used a terminal which had excess capacity. Cook's cost study does not convince us to adopt the termination rates negotiated by Pacific Bell and Pac-West Telecom nor those rates established in arbitrations between Pacific and wireline CLCs as reasonable approximations of Cook's additional costs of termination. Furthermore, although we are not bound by the FCC's determination on this issue, we note that First Report and Order presumes that a paging company's additional costs of termination would be less than those of the incumbent LEC, warns against the economic harm of imposing a rate based on the LEC's costs for termination, and specifically directs state commissions not to use the termination proxies established in the Order for establishing a paging carrier's termination rates (paragraphs 1092, 1093).

Pacific's adjustments to Cook's cost study appear to be reasonable, based on the record in this proceeding. Therefore, on an interim basis, we will accept Pacific's adjusted cost figure, 0.088 cents per page, based on an appropriately sized paging terminal, to set the termination rate. Pacific will pay the same rate to Cook regardless of whether the traffic is sent over a Type 2A (tandem) or a Type 1 connection.

We emphasize that these rates are interim. Therefore, we will keep this proceeding open to take further evidence to set a forward looking compensation rate which is consistent with our consensus costing principles. The assigned arbitrator will issue an ALJ ruling to set out a schedule for the second phase of the proceeding.

3.6 Rejection of Arbitrated Agreement and Filing of Agreement Consistent with the Terms of This Decision

For the reasons discussed, the arbitrated agreement does not meet the requirements of Sections 251(b)(5) and 252(d)(2). We therefore reject the agreement, and direct the parties to submit a new agreement that provides compensation to the applicant for its transport and termination of calls.

At the direction of the arbitrator, both parties previously presented a "dueling clause" agreement with sections that would be included or deleted as a consequence of the outcomes of the Arbitrator's Report (Ex. 20). We direct the parties to use that "dueling clause" agreement to file a new agreement that complies with the findings in this decision. In the dueling clause agreement, compensation for use of local paging interconnection facilities (Section 3.2 of the agreement) depended upon the basis for our finding. To clarify our position, we find that Cook is not entitled to reciprocal compensation pursuant to the terms of the Pac-West agreement. Therefore, the alternate language for Section 3.2 which determines that Cook is entitled to reciprocal compensation on terms other than those in the Pac-West agreement, should be adopted. The resulting section 3.2 provides for the recurring facilities charges to be apportioned between the parties based on the each party's relative amount of originating traffic sent over those facilities. Consequently, Cook will not be assessed recurring charges for the facilities.

Findings of Fact

1. Applicant is a one-way paging company.

2. Applicant terminates traffic that originates on the respondent's network and provides termination of telecommunications.

3. Applicant incurs costs for terminating traffic that originates on the respondent's network.

4. The Pac-West agreement was not approved under the Act.

5. Applicant does not provide the same service as PacWest.

6. No public policy objectives are met by denying compensation to applicant for the cost of terminating calls that originate on respondent's network.

7. Cook submitted a cost study that estimates the termination cost as 2.4 cents per page.

8. Cook requests the termination rates negotiated between Pacific Bell and Pac-West Telecom in Advice Letter 18115. Under those terms, Cook would be compensated at aproximately 0.95 cents per page.

9. We have no evidence in this case that the rates adopted in the Pac-West agreement with Pacific are based on cost.

10. Cook's cost study does not comply with our consensus costing principles established in D.95-12-016.

11. Cook's cost study includes costs for the paging terminal, the paging transmitters, and the facilities that connect them.

12. Cook's cost study includes costs for features that can be used for non-paging service.

13. Cook's cost study includes costs for equipment that can be used for other purposes than terminating Pacific-originated traffic.

14. Based on the record in this proceeding, Pacific's adjustments to Cook's cost study are reasonable to set rates on an interim basis.

15. Pacific makes adjustments to Cook's cost study to arrive at a cost ranging from 0.006 to 0.088 cents per page depending on the paging terminal selected and the capacity assumptions employed.

Conclusions of Law

1. Congress' intent in providing mutual compensation under the Act was to ensure that carriers that historically had not been compensated for terminating calls originating on the local exchange carrier network henceforth be compensated.

2. Paying compensation to one-way paging companies for terminating traffic is consistent with the Telecommunications Act of 1996, as well as FCC orders and regulations implementing the Act.

3. Cook's arguments did not convince us to adopt the termination rates negotiated by Pacific Bell and Pac-West Telecom nor those established in arbitrations between Pacific and wireline CLCs as reasonable approximations of Cook's additional costs of termination.

4. Pacific's cost estimate of 0.088 cents per page should be adopted as the rate for compensation to Cook for local termination on an interim basis.

5. Pacific's refusal to pay compensation on Type 1 connections is unreasonable because Cook still incurs termination costs at its paging terminal.

6. Pacific shall pay the same compensation to Cook for local termination regardless of whether the parties are interconnected by a Type 1 or Type 2A connection.

7. Cook should only be entitled to compensation for its paging terminal costs which, for the purposes of this arbitration, should be considered an equivalent facility to an end office switch.

8. Based on the facts in this arbitration, Cook is not currently entitled to compensation for transport. However, if and when Cook owns facilities that connect from a Pacific Bell end office or tandem to a Cook Paging Terminal, then Cook will be entitled to compensation for transport.

9. The Interconnection Agreement between Cook Telecom, Inc. and Pacific Bell should be rejected because it is inconsistent with the Act.

10. A new agreement should be submitted that conforms with this decision.

11. This order should be effective today.

O R D E R

IT IS ORDERED that:

1. Pursuant to the Telecommunications Act of 1996, the "Conformed Interconnection Agreement Between Cook Telecom, Inc. And Pacific Bell (U 1001 C)," dated and filed April 28, 1997, is rejected.

2. The parties shall jointly file, within 10 days of the date of this order, the Interim Conformed Interconnection Agreement in the formats described in Ordering Paragraph 5 below. The parties shall base their agreement on the "dueling clause"

agreement (Exhibit 20) and make the following changes to that agreement:

a. The sections of the conformed agreement shall reflect our determination that Cook is entitled to reciprocal compensation.

b. Section 3.2 of the agreement shall reflect our determination that Cook Telecom, Inc. is not entitled to the terms of the Pac-West agreement.

c. The termination compensation rate in the pricing Schedule in Attachment III shall be as follows:

0.088 cents per Local Paging Call

3. The agreement as described in Ordering Paragraph 2 above shall become effective when filed.

4. The assigned arbitrator shall issue a Ruling to establish a procedural schedule for the establishment of final rates for local transport and termination.

5. The parties shall submit the Interim Conformed Interconection Agreement to the Commission's Administrative Law Judge Division on electronic disk in hypertext markup language format. Further, within 10 days of the date of this order, Pacific Bell shall enter the Conformed Interconnection Agreement in its world wide web server, and provide information to the Administrative Law Judge Division Computer Coordinator on linking the Conformed Interconnection Agreement on Pacific Bell's server with the Commission's web site.

6. This proceeding shall remain open to set final rates for local transport and termination.

This order is effective today.

Dated May 21, 1997, at Sacramento, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
RICHARD A. BILAS
Commissioners

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner